



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 09, 2022

IN THE MATTER OF:

Appeal Board No. 624566

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 2, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed June 16, 2022 (), the Administrative Law Judge granted the employer's application to reopen A.L.J. Case No. 022-06805 and overruled the initial determinations.

The employer appealed the Judge's decision to the Appeal Board, insofar as it overruled the initial determinations. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a full-time high school teacher by the employer, The City School District of the City of New York, from January 8, 2008 through October 1, 2021. At the beginning of the September 2021 school year, she was teaching in-person.

In August 2021, the employer notified the claimant that she was mandated to receive the COVID-19 vaccine by October 1, 2021 or she would not be able to work pursuant to orders from the New York City Mayor and the New York City Commissioner of Health and Mental Hygiene. Pursuant to a September 10, 2021 arbitration award between the union, United Federation of Teachers, and the Board of Education of the City School District of the City of New York, the claimant was eligible to request a religious exemption from the employer.

On September 19, 2021, the claimant applied for a religious exemption. On the next day, the employer denied the claimant's religious exemption. The denial letter provided in part, "Per the Order of the Commissioner of Health, unvaccinated employees cannot work in a Department of Education (DOE) building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. We cannot offer another worksite as an accommodation as that would impose an undue hardship." The claimant appealed the denial of her religious exemption application.

On October 1, 2021, the employer placed the claimant on unpaid leave because she did not receive the COVID-19 vaccine. On March 17, 2022, the employer ended the claimant's employment because she did not receive the COVID-19 vaccine.

OPINION: The credible evidence establishes that the claimant's employment ended on October 1, 2021 because she refused to comply with the COVID-19 vaccine mandate and if she had been vaccinated she could have continued in her employment. There is no dispute that the claimant was aware of this requirement, that the requirement applied to her as a teacher, and she was further aware that she could not continue her employment if she did not comply. As the claimant was aware of the vaccine mandate and that she could be separated from employment if she chose not to comply, we find that she provoked her discharge. A provoked discharge occurs when a claimant voluntarily violates a legitimate known obligation, leaving the employer no choice but to discharge her. A provoked discharge is considered a voluntary leaving of employment without good cause for unemployment insurance purposes and subjects a claimant to a disqualification from receiving benefits (see, *Matter of DeGrego*, 39 NY2d 180 [3d Dept.1976]).

The obligation in this matter was compliance with the employer's vaccine requirement which was established for the purpose of complying with the New

York City Commissioner of Health's mandate that all public employees of the City of New York, including New York City Department of Education personnel, be vaccinated against COVID-19 during the worldwide pandemic. The Courts have long held that New York State has the authority to regulate public health, including mandating vaccination to curb the spread of disease (see

Matter of Garcia v. New York City Dept. of Health & Mental Hygiene, 31 NY3d 601 [2018], which upheld mandated annual influenza vaccinations for children attending childcare programs in New York City; Matter of C.F. v. New York City Dept of Health & Mental Hygiene, 191 AD3d 52 [2d Dept 2020], holding that a municipal agency had the authority to require immunizations of adults in an area where there was an outbreak of measles if authorized by law; and Matter of New York City Mun. Labor Comm. v. City of New York, 73 Misc.3d 621 [Sup. Ct. N.Y. Cnty. 2021], where the Court declined to grant a temporary restraining order of the implementation of the New York City Department of Education's COVID-19 vaccine mandate for its employees, noting that there was no dispute that the Department of Health and Mental Hygiene had the authority to issue the mandate and that the Court "...cannot and will not substitute [others'] judgment for that of New York City's public health experts," citing New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82 v. Cuomo, 64 NY2d 233, 237-40 [1984]). Because of the severity of the ongoing COVID-19 crisis and healthcare providers' need to protect the health of their employees, the mandate that all Department of Education personnel be vaccinated against COVID-19 was justified by a compelling governmental interest. Therefore, we find that the employer's requirement for the claimant to be vaccinated was a legitimate obligation and the employer had no choice but to end the claimant's employment when she refused to become vaccinated.

We disagree with the Judge's opinion that the claimant's sincerely held religious beliefs provide her with good cause for refusing to become vaccinated and that the employer failed to produce evidence regarding why her request was denied. . The Supreme Court of the United States has held that "... an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate" (see Employment Div. v. Smith, 494 US 872, 879 [1990]). The Court determined that provided a law is neutral and not aimed at a specific religion, is generally applicable, and pertains to an area of law the government has the ability to regulate, it cannot be preempted by a religious practice. There is no allegation that the City of New York cannot regulate the Department of Education, that the law is not generally applicable to those

working in public schools, or that it targeted a specific religion. Moreover, the United States Supreme Court has denied requests to block the vaccine mandate for New York City teachers (See *Keil v. City of New York*, No. 21A398, 595 U.S. ___, March 7, 2022; *Maniscalco, v. NYC Dept of Education*, No. 21-854, 596 U.S. ___, April 18, 2022). We also note that the employer's denial letter provided reasons for why the claimant's request was denied.

Therefore, we find that the claimant's personal beliefs do not outweigh the employer's interest in protecting the health and safety of its employees and students so the claimant has not substantiated that she had good cause for ending continuing employment (See Appeal Board Nos. 623435 and 621525). Accordingly, we conclude that the claimant was properly denied benefits. Further, in light of the foregoing, the issue of misconduct is academic.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issue decided herein.

MICHAEL T. GREASON, MEMBER